



California Regulatory Notice Register

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The *California Regulatory Notice Register* is an official state publication of the Office of Administrative Law containing notices of proposed regulatory actions by state regulatory agencies to adopt, amend or repeal regulations contained in the California Code of Regulations. The effective period of a notice of proposed regulatory action by a state agency in the *California Regulatory Notice Register* shall not exceed one year [Government Code § 11346.4(b)]. It is suggested, therefore, that issues of the *California Regulatory Notice Register* be retained for a minimum of 18 months.

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PROPOSED ACTION ON REGULATIONS

Information contained in this document is published as received from agencies and is not edited by the Office of State Publishing.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by sections 82011, 87303, and 87304 of the Government Code to review proposed conflict of interest codes, will review the amended conflict of interest codes of the following agencies:

CONFLICT OF INTEREST CODE

AMENDMENTS

STATE AGENCIES:

University of California and California State Teachers' Retirement System

A written comment period has been established commencing on **December 17, 2004**, and closing on **January 31, 2005**. Written comments should be directed to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814.

At the end of the 45-day comment period, the proposed amendment to the conflict of interest code will be submitted to the Commission's Executive Director for review, unless any interested person, or his or her duly authorized representative, requests, no later than 15 days prior to the close of the written comment period, a public hearing before the full Commission. If a public hearing is requested, the proposed amendment will be submitted to the Commission for review.

The Executive Director of the Commission will review the above-referenced amendment to the conflict of interest code, proposed pursuant to Government Code section 87300, which designates, pursuant to Government Code section 87302, employees who must disclose certain investments, interests in real property, and income.

The Executive Director or the Commission, upon his or her own motion or at the interest of any interested person, will approve, or revise and approve, or return the amendment to the agency for revision and re-submission within 60 days without further notice.

Any interested person may present statements, arguments, or comments, in writing to the Executive

Director of the Commission, relative to review of the proposed amendment to the conflict of interest code. Any written comments must be received no later than **January 31, 2005**. If a public hearing is to be held, oral comments may be presented to the Commission at the hearing.

COST TO LOCAL AGENCIES

There shall be no reimbursement for any new or increased costs to local government which may result from compliance with these codes because these are not new programs mandated on local agencies by the codes since the requirements described herein were mandated by the Political Reform Act of 1974. Therefore, they are not "costs mandated by the state" as defined in Government Code section 17514.

EFFECT ON HOUSING COSTS AND BUSINESSES

Compliance with the codes has no potential effect on housing costs or on private persons, businesses, or small businesses.

AUTHORITY

Government Code sections 82011, 87303, and 87304 provide that the Fair Political Practices Commission as the code reviewing body for the above conflict of interest code shall approve codes as submitted, revise the proposed code, and approve it as revised, or return the proposed code for revision and re-submission.

REFERENCE

Government Code sections 87300 and 87306 provide that agencies shall adopt and promulgate conflict of interest codes pursuant to the Political Reform Act and amend their codes when change is necessitated by changed circumstances.

CONTACT

Any inquiries concerning the proposed conflict of interest code(s) should be made to Adrienne Korchmaros, Fair Political Practices Commission, 428 J Street, Suite 620, Sacramento, California 95814, telephone (916) 322-5660.

TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, under the authority vested in it by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of

Regulations. The Fair Political Practices Commission will consider the proposed regulations at a public hearing on or after January 20, 2005, at 9:30 a.m. Written comments must be received at the Commission offices no later than noon on January 19, 2005.

BACKGROUND/OVERVIEW

The Political Reform Act requires disclosure of certain gifts received by candidates and public officials and prohibits the candidate or public official from accepting gifts of \$340 or more. Additionally, the Act prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift valued at \$340 or more. Title 2, California Code of Regulations sections 18946 through 18946.5 provide the methods for determining the valuation of gifts.

REGULATORY ACTION

Amend 2 Cal. Code Regs. section 18946: The Commission will consider proposed amendments to regulation 18946, adding definitions to clarify the methods of valuation used in regulations 18946.1 through 18946.5. Terms such as "face value," "ticket/pass," "invitation," and "specific item" are defined.

Amend 2 Cal. Code Regs. section 18946.1: The Commission will consider proposed amendments to consider alternative methods for valuing tickets, other than at "face value," when the donor purchases a ticket at a price greater than its face value.

Amend 2 Cal. Code Regs. section 18946.2: The Commission will consider proposed amendments to regulation 18946.2 determining a valuation method for invitation-only events; defining the method for determining such valuation; and identifying any possible exceptions or modifications to the general rule. The proposed amendments include valuing attendance at invitation-only events at the pro rata share of the cost to the donor, defining the method for calculating the "pro rata share of the cost to the donor," limiting the value to food and beverage provided when an official performs a ceremonial function at the event, and creating an exception when the official or candidate merely drops in for a limited appearance and does not receive the full benefits of attending the event.

Add 2 Cal Code Regs. section 18640: The Commission will consider the proposed addition of regulation 18640 setting forth the reporting rules for lobbyist employers when reporting activity expenses under the proposed drop in exception referred to in regulation 18946.2.

Amend 2 Cal. Code Regs. section 18946.4: The Commission will consider proposed amendments to regulation 18946.4 modifying or eliminating the current method for determining the value of tickets to fundraising events for nonprofit organizations. The

Commission may eliminate the current exception under this regulation for nonprofit organizations or the "no value" rule for 501(c)(3) organizations, or may modify or limit the exceptions by such means as limiting the amount of tickets that would qualify under the current exception and/or excluding certain fundraising events from the exception.

Amend 2 Cal. Code Regs. section 18941.1: This proposed amendment adds references to any changes made under regulations 18946.2 and 18946.4 as exceptions provided for payments of food under this regulation.

FISCAL IMPACT STATEMENT

Fiscal Impact on Local Government. The regulations will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. The regulations will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. The regulations will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY

Government Code section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE

The purpose of these regulations is to implement, interpret and make specific Government Code sections 82028, 87207, 87302, 86112, 86112.5 and 89501 through 89506.

CONTACT

Any inquiries should be made to Bill Lenkeit, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at:

<http://www.fppc.ca.gov/index.html?id=351>.

ADDITIONAL COMMENTS

After the hearing, the Commission may adopt or repeal the proposed regulations if they remain substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the proposed regulations before their adoption or repeal.

TITLE 2. SAN JOAQUIN RIVER CONSERVANCY

NOTICE OF INTENT TO AMEND THE CONFLICT OF INTEREST CODE

The San Joaquin River Conservancy Conflict of Interest Code designates positions required to file statements of conflict of interest and identifies disclosure categories pursuant to the provisions of the Title 2 California Code of Regulations § 18730.

The San Joaquin River Conservancy Governing Board proposes to amend its Conflict of Interest Code, Appendix A adopted February 9, 1995, to include an Associate Government Program Analyst as a Designated Position in Category A.

The adoption of the proposed amendment will not impose a cost or savings on any state agency, local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code; will not result in any nondiscretionary cost or savings to local agencies; will not result in any cost or savings in federal funding to the state; will not impose a mandate on local agencies or school districts; and will not have any potential cost impact on private persons or businesses including small businesses.

The San Joaquin River Conservancy has determined that no alternative considered by this agency would be more effective in carrying out the proposed amendment or would be as effective and less burdensome to affected private persons than the proposed action.

Pursuant to the requirements of Government Code Section 87311, a copy of the notice has been provided to each employee of the Conservancy affected by the proposed amendment.

The written comment period begins December 17, 2004 and ends February 9, 2005. Any comments regarding the proposed amendment must be submitted in writing no later than February 9, 2005. Any interested person may request a public hearing no later than January 26, 2004.

The proposed amended conflict of interest code is available for inspection or copying at the San Joaquin River Conservancy office located at 5469 E. Olive Avenue, Fresno, CA 93727. For further information, contact Candyce Rogers, Executive Secretary at (559) 253-7324.

AUTHORITY

Government Code section 87306

REFERENCE

Government Code section 87300–87302, 87306

TITLE 3. DEPARTMENT OF PESTICIDE REGULATION

Pertaining to the Herbicide Clopyralid
DPR Regulation No. 04-003

NOTICE OF PROPOSED REGULATORY ACTION

The Department of Pesticide Regulation (DPR) proposes to adopt section 6576 and subchapter 4, article 1, section 6950 in chapter 4 of Title 3, California Code of Regulations (3 CCR). The proposed regulatory action pertains to lawn and turf uses of the herbicide clopyralid.

SUBMITTAL OF COMMENTS

Any interested person may present comments in writing about the proposed action to the agency contact person named below. Written comments must be received no later than 5:00 p.m. on January 31, 2005. Comments regarding this proposed action may also be transmitted via e-mail <dpr04003@cdpr.ca.gov> or by facsimile transmission at (916) 324-1452.

A public hearing is not scheduled. However, a public hearing will be scheduled if any interested person submits a written request for a public hearing to DPR no later than 15 days prior to the close of the written comment period.¹

EFFECT ON SMALL BUSINESS

DPR has determined that the proposed regulatory action does affect small businesses.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In 1997, clopyralid, a low-toxicity herbicide that poses little hazard to people, animals, and most vegetation, was initially registered for use in California by the basic manufacturer to combat yellowstar thistle, a noxious weed that can kill livestock. It was subsequently registered by the basic manufacturer and other registrants for use on lawn and turf for control of broadleaf weeds.

In 2000, clopyralid was detected in compost in Washington State and determined to be the cause of injury to non-target plants. Grass clippings from residential lawns treated with clopyralid-containing products were considered to be one source of the residues in compost. Although some commercial compost facilities in California have detected clopyralid residues, no cases of non-target vegetative damage have been documented in the state.

¹ If you have special accommodation or language needs, please include this in your request for a public hearing. TTY/TDD speech-to-speech users may dial 7-1-1 for the California Relay Service.

Compost plays a critical role in implementing the California Integrated Waste Management Act of 1989. This law requires all cities and counties to develop source reduction, recycling, and composting programs to achieve a 50 percent reduction in the amount of solid waste disposed of in California. The economic viability of the California composting industry will be threatened if residential, agricultural, commercial, and public users of compost lose confidence in the quality and safety of compost due to the presence of clopyralid residues. Local governments and waste haulers divert six million tons of yard waste annually from landfills to composting facilities, making composting a principal means by which local governments meet the state's landfill diversion requirements.

DPR and the California Integrated Waste Management Board (CIWMB), within the California Environmental Protection Agency (Cal/EPA), began investigating the possible presence of clopyralid residues in compost. DPR and CIWMB co-sponsored a workgroup that included compost industry representatives, the basic manufacturer, and other interested parties. This workgroup has sponsored a series of stakeholder meetings to determine how clopyralid is used in California and which uses can potentially contaminate compost feedstocks. The workgroup has coordinated stakeholder efforts to provide public information on the problem and to support a compost testing program to generate clopyralid residue data.

Assembly Bill 2356 (Chapter 591, Statutes of 2002) subsequently placed limitations on the sale and use of clopyralid lawn and turf products and required DPR to make a determination about continued use of clopyralid turf products to protect compost from becoming contaminated with persistent clopyralid residues. The Director was required to make a determination by April 1, 2003, on which lawn and turf uses are likely to result in persistent residues in compost and which uses will not. Persistent residues are defined by the bill as "residues of an herbicide in compost at levels and in a form with the potential to be toxic or injurious to plants." For those uses that are likely to cause persistent residues in compost, the Director must either impose restrictions or cancel uses.

The restrictions that DPR plans to impose on the sale and use of clopyralid lawn and turf products are the subject of this proposed regulatory action.

DPR proposes to adopt section 6576 requiring licensed pest control dealers to obtain a signed statement from a licensed or certified qualified applicator certifying that he/she or their employees will not apply any product containing clopyralid to a residential lawn, and will only apply it to sites where the licensed or certified qualified applicator can assure the collected grass clippings will remain on the property.

In addition, DPR proposes to adopt subchapter 4, article 1, section 6950 of chapter 4 that prohibits applying clopyralid-containing products to lawn and turf unless the grass clippings from the treated area remain on the property, and prohibits applying clopyralid-containing products to residential lawns.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

DPR has determined that the proposed regulatory action does not impose a mandate on local agencies or school districts, nor does it require reimbursement by the State pursuant to Part 7 (commencing with section 17500) of Division 4 of the Government Code because the regulatory action does not constitute a "new program or higher level of service of an existing program" within the meaning of section 6 of Article XIII of the California Constitution. DPR has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action.

COSTS OR SAVINGS TO STATE AGENCIES

DPR has determined that no savings or increased costs to any State agency will result from the proposed regulatory action.

EFFECT ON FEDERAL FUNDING TO THE STATE

DPR has determined that no costs or savings in federal funding to the State will result from the proposed action.

EFFECT ON HOUSING COSTS

DPR has made an initial determination that the proposed action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES

DPR has made an initial determination that adoption of this regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

DPR has made an initial determination that the adoption of this regulation will not have a significant cost impact on representative private persons or businesses. Affected private persons and small businesses may include pesticide applicators, pest control businesses, and pesticide dealers. Any additional costs resulting from changes in application practices or pesticides selected should not have a significant adverse economic impact on pest control businesses. Pesticide dealers currently selling clopyralid pesticide

products may experience some decreased sales that might be offset by increased sales from alternative substituted chemicals.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS

DPR has determined that it is unlikely the proposed regulatory action will impact the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business with the State of California.

CONSIDERATION OF ALTERNATIVES

DPR must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons or businesses than the proposed regulatory action.

AUTHORITY

This regulatory action is taken pursuant to the authority vested by Food and Agricultural Code sections 11456, 12111, 12781, 12976, and 14102.

REFERENCE

This regulatory action is to implement, interpret, or make specific Food and Agricultural Code sections 12824, 13190, 13191, and 13192.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

DPR has prepared an Initial Statement of Reasons, and has available the express terms of the proposed action, all of the information upon which the proposal is based, and a rulemaking file. A copy of the Initial Statement of Reasons and the proposed text of the regulation may be obtained from the agency contact person named in this notice. The information upon which DPR relied in preparing this proposal and the rulemaking file are available for review at the address specified below.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the comment period, DPR may make the regulation permanent if it remains substantially the same as described in the Informative Digest. If DPR does make changes to the regulation, the modified text will be made available for at least 15 days prior to adoption. Requests for the modified text should be addressed to the agency contact person named in this notice. DPR will accept written comments on any changes for 15 days after the modified text is made available.

AGENCY CONTACT

Written comments about the proposed regulatory action; requests for a copy of the Initial Statement of Reasons, the proposed text of the regulation, and a public hearing; inquiries regarding the rulemaking file; or questions on the substance of the proposed regulatory action may be directed to:

David Haskell, Associate Environmental
Research Scientist
Pesticide Registration Branch
Department of Pesticide Regulation
1001 I Street
P.O. Box 4015
Sacramento, California 95812-4015
(916) 445-4207

Note: In the event the contact person is unavailable, inquiries should be directed to the following backup contact person at the same address as noted above:

Linda Irokawa-Otani, Regulations Coordinator
Office of Legislation and Regulations
(916) 445-3991

This Notice of Proposed Action, the Initial Statement of Reasons, and the proposed text of the regulation are also available on DPR's Internet Home Page at <<http://www.cdpr.ca.gov>>.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Following its preparation, a copy of the Final Statement of Reasons mandated by Government Code section 11346.9(a) may be obtained from the contact person named above. In addition, the Final Statement of Reasons will be posted on DPR's Internet Home Page and accessed at <<http://www.cdpr.ca.gov>>.

TITLE 5. COMMISSION ON TEACHER CREDENTIALING

DIVISION VIII OF TITLE 5 CALIFORNIA CODE OF REGULATIONS

Proposed Addition of Sections 80021 and 80021.1 Pertaining To Multiple Subject, Single Subject or Education Specialist Short-Term Staff Permit and Multiple Subject, Single Subject or Education Specialist Provisional Internship Permit

NOTICE OF PROPOSED RULEMAKING

The Commission on Teacher Credentialing proposes to add regulations described below after considering all comments, objections and recommendations regarding the proposed actions.

PUBLIC HEARING

A public hearing on the proposed actions will be held:

February 1, 2005

10:00 am

California Commission on Teacher Credentialing

1900 Capitol Avenue

Sacramento, CA 95814

Oral comments on the proposed action will be taken at the public hearing. We would appreciate 14 days advance notice in order to schedule sufficient time on the agenda for all speakers. Please contact Dale Janssen at (916) 323-5065 regarding this.

Any person wishing to submit written comments at the public hearing may do so. It is requested, but not required, that persons submitting such comments provide fifty copies to be distributed to the Commissioners and interested members of the public. All written statements submitted at the hearing will, however, be given full consideration regardless of the number of copies submitted.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments by fax, through the mail, or by e-mail on the proposed action. The written comment period closes at 5:00 p.m. on January 31, 2005. Comments must be received by that time or may be submitted at the public hearing. You may fax your response to (916) 327-3166; write to the California Commission on Teacher Credentialing, attention Dale Janssen, 1900 Capitol Avenue, Sacramento, CA 95814; or submit an e-mail at djanssen@ctc.ca.gov.

Any written comments received 21 days prior to the public hearing will be reproduced by the Commission's staff for each Commissioner as a courtesy to the person submitting the comments and will be included in the written agenda prepared for and presented to the full Commission at the hearing.

AUTHORITY AND REFERENCE

Education Code Section 44225 authorizes the Commission to adopt the proposed actions, which will implement, interpret or make specific sections 44225(b), 44225(d) and 44225(l) of the Education Code and govern the procedures of the Commission.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

Education Code Section 44225 provides that the Commission may promulgate rules and regulations.

§ 80021 Multiple Subject, Single Subject or Education Specialist Short-Term Staff Permit

This document would be used when a district needs to staff a classroom immediately. Some of the possible reasons discussed at the stakeholders meeting include illness, approved leave, enrollment adjustments and to serve as a bridge document for those who have completed subject matter competency but have been unable to enroll in a teacher preparation program.

§ 80021.1 Multiple Subject, Single Subject or Education Specialist Provisional Internship Permit

This permit is for occurrences when the district knows that there will be an opening, conducts a diligent search yet is unable to recruit a suitable candidate. The expectations of the district and the employee are much higher since this individual will be the teacher of record and should be on a credential track. The focus of the document is meeting subject matter competency. Once a candidate completes subject matter competency, the candidate can be employed on an NCLB compliant document such as an Individualized Internship Certificate or a University or District Internship credential.

Documents Incorporated by Reference

None

DISCLOSURES REGARDING THE PROPOSED ACTIONS

The Commission has made the following initial determinations:

Mandated costs to local agencies or school districts:

None

Other non-discretionary costs or savings imposed upon local agencies: None

Cost or savings to any state agency: None

Cost or savings in federal funding to the state: None

Significant effect on housing costs: None

Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

These proposed regulations will not impose a mandate on local agencies or school districts that must be reimbursed in accordance with Part 7 (commencing with Section 17500) of the Government Code.

Cost impacts on a representative private person or business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Assessment regarding the creation or elimination of jobs in California (Govt. Code § 11346.3(b)): The Commission has made an assessment that the proposed amendment to the regulation(s) would not (1) create nor eliminate jobs within California,

(2) create new business or eliminate existing businesses within California, and (3) affect the expansion of businesses currently doing business within California.

Effect on small businesses: The Commission has determined that the proposed amendment to the regulations does not effect small business. The regulations are not mandatory but an option that effects public school districts and county offices of education.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Commission would be more effective in carrying out the purpose for which the actions are proposed or would be as effective and less burdensome to affected private persons or small businesses than the proposed action. Interested individuals may present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSON/FURTHER INFORMATION

General or substantive inquiries concerning the proposed action may be directed to Dale Janssen at (916) 323-5065 or Dale Janssen, Commission on Teacher Credentialing, 1900 Capitol Ave. Sacramento, CA 95814. General question inquiries may also be directed to Debra Moss at (916) 322-4974 or at the address mentioned in the previous sentence. Upon request, a copy of the express terms of the proposed action and a copy of the initial statement of reasons will be made available. Also available upon request is a copy of the documents incorporated by reference. This information is also available on the Commission's web-site at <<http://www.ctc.ca.gov>>. In addition, all the information on which this proposal is based is available for inspection and copying.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The entire rulemaking file is available for inspection and copying throughout the rulemaking process at the Commission office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of regulations, and the initial statement of reasons.

MODIFICATION OF PROPOSED ACTION(S)

If the Commission proposes to modify the actions hereby proposed, the modifications (other than non-substantial or solely grammatical modifications) will be made available for public comment for at least 15 days before they are adopted.

AVAILABILITY OF FINAL STATEMENT OF REASONS

The Final Statement of Reasons is submitted to the Office of Administrative Law as part of the final rulemaking package, after the public hearing. When it is available, it will be placed on the Commission's web site at <<http://www.ctc.ca.gov>> or you may obtain a copy by contacting Dale Janssen at (916) 323-5065.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Action, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through the Commission's web site at www.ctc.ca.gov.

TITLE 14. FISH AND GAME COMMISSION

NOTICE OF PROPOSED CHANGES IN REGULATIONS

NOTICE IS HEREBY GIVEN that the Fish and Game Commission (Commission), pursuant to the authority vested by Sections 1904 and 2070 of the Fish and Game Code and to implement, interpret or make specific Sections 1755, 1904, 2062, 2067, 2070, 2072.7 and 2075.5, of said Code, proposes to amend Section 670.2, Title 14, California Code of Regulations, relating to Plants of California Declared to Be Endangered, Threatened or Rare.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Department of Fish and Game proposes to amend Section 670.2 of Title 14, CCR, to add Scotts Valley polygonum to the list of endangered plants. This proposal is based upon the documentation of threats to the habitat of this species to the point that it meets the criteria for listing as endangered by the Fish and Game Commission as set forth in the California Endangered Species Act (CESA). The Department is fulfilling its statutory obligation in making this proposal which, if adopted, would afford this species the recognition and protection available to it under CESA. Scotts Valley polygonum is extremely rare; its worldwide distribution is limited to two populations in California occupying a total area of less than one acre.

NOTICE IS GIVEN that any person interested may present statements, orally or in writing, relevant to this action at a hearing to be held in the Shedd Auditorium, Hubbs-Seaworld Research Institute, 2595 Ingraham Street, San Diego, California on February 3, 2005, at 10:00 a.m., or as soon thereafter as the matter may be heard. It is requested, but not required, that written comments be submitted on or before January 28, 2005, at the address given below, or

by fax at (916) 653-5040, or by e-mail to FGC@dfg.ca.gov, but must be received no later than February 3, 2005, at the hearing in San Diego, CA. All written comments must include the true name and mailing address of the commenter.

Ron Rempel, Department of Fish and Game, phone (916) 653-4875, has been designated to respond to questions on the substance of the proposed regulations. The regulation language, as proposed in strikeout-underline format, as well as an Initial Statement of Reasons, including environmental considerations and all information upon which the proposal is based (rulemaking file), are on file and available for public review from the agency representative, Robert R. Treanor, Executive Director, Fish and Game Commission, 1416 Ninth Street, Box 944209, Sacramento, California 94244-2090, phone (916) 653-4899. Please direct inquiries regarding the regulatory process to Robert R. Treanor or Tracy L. Reed at the preceding address or phone number. Copies of the Initial Statement of Reasons, including the regulatory language, may be obtained from the address above. Notice of the proposed action shall be posted on the Fish and Game Commission website at <http://www.fgc.ca.gov/>.

AVAILABILITY OF MODIFIED TEXT

If the regulations adopted by the Commission differ from but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Any person interested may obtain a copy of said regulations prior to the date of adoption by contacting the agency representative named herein.

If the regulatory proposal is adopted, the final statement of reasons may be obtained from the address above when it has been received from the agency program staff.

IMPACT OF REGULATORY ACTION

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states because the species is restricted to an area of less than one acre in central coastal California.

While the statutes of the California Endangered Species Act (CESA) do not specifically prohibit the consideration of economic impact in determining if listing is warranted, the Attorney General's Office has consistently advised the Commission that it should not consider economic impact in making a finding on listing. This is founded in the concept that CESA was drafted in the image of the federal Endangered Species Act. The federal act specifically prohibits consideration of economic impact during the listing process.

CESA is basically a two-stage process. During the first stage, the Commission must make a finding on whether or not the petitioned action is warranted. By statute, once the Commission has made a finding that the petitioned action is warranted, it must initiate a rulemaking process to make a corresponding regulatory change. To accomplish this second stage, the Commission follows the statutes of the Administrative Procedure Act (APA).

The provisions of the APA, specifically sections 11346.3 and 11346.5 of the Government Code, require an analysis of the economic impact of the proposed regulatory action. While Section 11346.3 requires an analysis of economic impact on businesses and private persons, it also contains a subdivision (a) which provides that agencies shall satisfy economic assessment requirements only to the extent that the requirements do not conflict with other state laws. In this regard, the provisions of CESA leading to a finding are in apparent conflict with Section 11346.3, which is activated by the rulemaking component of CESA.

Since the finding portion of CESA is silent to consideration of economic impact, it is possible that subdivision (a) of Section 11346.3 does not exclude the requirement for economic impact analysis. While the Commission does not believe this is the case, an abbreviated analysis of the likely economic impact of the proposed regulation change on businesses and private individuals is provided. The intent of this analysis is to provide disclosure, the basic premise of the APA process. The Commission believes that this analysis fully meets the intent and language of both statutory programs.

Designation of Scotts Valley polygonum as endangered will subject it to the provisions of CESA. This act prohibits take and possession except as may be permitted by the Department, the Native Plant Protection Act, or in the California Desert Native Plants Act.

Endangered status is not expected to result in any significant adverse economic effect on small business or significant cost to private persons or entities undertaking activities subject to CEQA. CEQA requires local governments and private applicants undertaking projects subject to CEQA to consider de facto endangered (or threatened) species to be subject to the same requirements under CEQA as though they were already listed by the Commission in Section 670.2 (CEQA Guidelines, Section 15380). Based on its rarity, Scotts Valley polygonum would qualify for this protection under CEQA.

Required mitigation as a result of lead agency actions under CEQA, whether or not a taxon is listed by the Commission, may increase the cost of a project. Such costs may include, but are not limited to, purchase of off-site habitat, development and implementation of management plans, establishment of new populations, installation of protective devices such as fencing, protection of additional habitat, and long-term monitoring of mitigation sites. If the mitigation measures required by CEQA lead agency do not minimize and fully mitigate to the standards of CESA, listing could increase business costs by requiring measures beyond those required by CEQA.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.
- (c) Cost Impacts on a Representative Private Person or Business: The Commission is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- (d) Costs or Savings to State Agencies or Costs/Savings in Federal funding to the State: None.
- (e) Nondiscretionary Costs/Savings to Local Agencies: None.
- (f) Programs Mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None.
- (h) Effect on Housing Costs: None.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations may affect small business.

CONSIDERATION OF ALTERNATIVES

The Commission must determine that no reasonable alternative considered by the Commission, or that has otherwise been identified and brought to the attention of the Commission, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 14. OFFICE OF SPILL PREVENTION AND RESPONSE

NOTICE OF PROPOSED RULEMAKING

Notice is hereby given that the Office of Spill Prevention and Response (OSPR) within the Department of Fish and Game, proposes to amend Sections 8512 through 852.6 in Subdivision 4, Chapter 4, Subchapter 5 of Title 14 of the California Code of Regulations (CCR). These sections pertain to the Escort Tug Regulations for San Diego Harbor.

PUBLIC HEARING

Pursuant to Government code Section 11346.8(a), no public hearing has been scheduled on the proposed action. However, a hearing will be held if the OSPR receives a written request for a public hearing from any interested persons, or his or her duly authorized representative, no later than 15 days prior to the close of the written comment period. If a hearing is requested, it will be held in Sacramento.

SUBMISSION OF WRITTEN COMMENTS

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to OSPR. All written comments must be received by OSPR at this office no later than 5:00 p.m. on January 31, 2005, in order to be considered. Written comments may be submitted by mail, fax, or e-mail, as follows:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090
Attention: Joy D. Lavin-Jones
Fax: (916) 324-5662
E-mail: jlavinj@ospr.dfg.ca.gov

PERMANENT ADOPTION OF REGULATIONS

OSPR may thereafter adopt the proposal substantially as described in this Notice, or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or

grammatical changes, the full text of any modified proposals—with changes clearly indicated—will be available for 15 days prior to its adoption from the person designated in this Notice as contact person. The text will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Government Code Section 8670.23.1 grants the Administrator the authority to adopt regulations and guidelines for harbor safety plans in consultation with the port authorities of the harbors and other affected parties. These regulations implement, interpret and make specific Government Code Section 8670.23.1. Government Code Section 8670.23.1(d) requires that the Administrator shall give his highest priority to the development of regulations and guidelines concerning tug escorts.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The Lempert-Keene-Seastrand Oil Spill Prevention and Response Act (Act), enacted in 1990 by Senate Bill 2040, created a comprehensive state oil spill program for marine waters. Among its many provisions, the Act authorized the Administrator to create harbor safety committees for the following five harbors: San Diego; Los Angeles/Long Beach; Port Huenumbe; San Francisco, San Pablo and Suisun Bays; and Humboldt Bay. Each committee is required to develop harbor safety plans for the safe navigation and operation of tankers, barges and other vessels within the harbors. Government Code Section 8670.23 also directed the Administrator to adopt regulations and guidelines for the development of tug escort requirements for the specified harbors.

There are existing regulations specifying the tug escort requirements for the San Diego Harbor. The proposed regulatory amendments would make clarifying changes, and also make changes to provide consistency with the escort tug testing and certification requirements of the other harbors in California. Nonsubstantive authority and reference citation corrections have also been made throughout the subchapter.

SMALL BUSINESS IMPACT STATEMENT

OSPR has determined that the proposed regulations may affect small businesses.

COMPLIANCE WITH GOVERNMENT CODE SECTIONS 8574.10 AND 8670.55

In accordance with Government Code Section 8574.10, these regulations have been submitted to the Review Subcommittee of the State Interagency Oil

Spill Committee for review and comment; and in accordance with Government Code Section 8670.55, these regulations have been submitted to the Oil Spill Technical Advisory Committee for review and comment.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: NONE.

Costs or savings to any state agency: NONE.

Costs or savings to local agencies or school districts which must be reimbursed in accordance with Part 7 (commencing with Section 17500) of Division 4 of the Government Code: NONE.

Other non-discretionary costs or savings imposed upon local agencies: NONE.

Costs or savings in federal funding to the state: NONE.

Cost impacts on representative private persons or businesses: These amendments codify current practices and will not result in significant additional costs to private persons or directly affected businesses. OSPR is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant effect on housing costs: NONE.

BUSINESS IMPACTS

The OSPR has made an initial determination that the proposed amendments will not have a significant statewide adverse economic impact directly affecting California businesses, including the ability of California businesses to compete with businesses in other states.

ASSESSMENT OF JOB/BUSINESS CREATION OR ELIMINATION

The OSPR has determined that this regulatory proposal will not have a significant impact on the creation or elimination of jobs in the State of California, and will not result in the elimination of existing businesses nor create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), OSPR must determine that no reasonable alternative that has been considered or that has otherwise been identified and brought to the attention of OSPR would be more effective in carrying out the purpose for which this action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF DOCUMENTS
AND OSPR CONTACT PERSON

OSPR has prepared a Initial Statement of Reasons for the proposed regulatory action and has available all the information upon which the proposal is based. Copies of the exact language of the proposed regulations, Initial Statement of Reasons, forms, the rulemaking file, the Final Statement of Reasons (when available) and other information, if any, may be obtained upon request from the:

Department of Fish and Game
Office of Spill Prevention and Response
P.O. Box 944209
Sacramento, California 94244-2090

In addition, the Notice, the exact language of the proposed regulations, and the Initial Statement of Reasons may be found on the World Wide Web at the following address:

www.dfg.ca.gov/ospr/organizational/legal/regulations/regulations.htm

Questions regarding the proposed regulations, requests for documents, or any questions concerning the substance this regulatory action may be directed to Joy Lavin-Jones ((916) 327-0910), or Barbara Foster ((916) 327-9406).

**TITLE 16. BOARD
OF PSYCHOLOGY**

NOTICE IS HEREBY GIVEN that the Board of Psychology (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Hotel De Anza, 233 W. Santa Clara Street, San Jose, California, at 10:00 a.m., on February 5, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on Wednesday, February 2, 2005 or must be received by the board at the hearing. The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 125.9, 148 and 2930 of the Business and Professions Code, and to implement, interpret or make specific Sections 125.9 and 148 of said Code, the board is considering changes to Division 13.1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY
STATEMENT OVERVIEW

Pursuant to SB 362, statutes of 2003, section 125.9 of the Business and Professions Code was amended to increase the amount of an administrative fine to \$5,000. The proposed language would add a new subsection (c) to section 1397.51 of Division 13.1 of Title 16, which would allow the board to impose a civil penalty between \$2,501 and \$5,000 where exceptional circumstances were present. The enhanced civil penalty would be appropriate where a violation has an immediate relationship to the health and safety of another person, the cited person has a history of two or more prior citations of the same or similar violations, the citation involves a multiple violation that demonstrates a willful disregard of the law or the citation involves a violation or violations perpetrated against a senior citizen or disabled person.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: N/A

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulation would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Psychology at 1422 Howe Avenue, Suite 22, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kathy Bradbury
Address: 1422 Howe Avenue, Suite 22
Sacramento, CA 95825
Telephone No.: (916) 263-0712
Fax No.: (916) 263-2697
E-Mail Address: kathy_bradbury@dca.ca.gov

The backup contact person is:

Name: Jeffrey Thomas
Address: 1422 Howe Avenue, Suite 22
Sacramento, CA 95825

Telephone No.: (916) 263-1617

Fax No.: (916) 263-2697

E-Mail Address: jeff_thomas@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.psychboard.ca.gov.

TITLE 16. BOARD OF PSYCHOLOGY

NOTICE IS HEREBY GIVEN that the Board of Psychology (hereinafter "board") is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Hotel De Anza, 233 W. Santa Clara Street, San Jose, California, at 10:00 a.m., on February 5, 2005. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the board at its office not later than 5:00 p.m. on Wednesday, February 2, 2005 or must be received by the board at the hearing. The board, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 2915(g) and 2930 of the Business and Professions Code, and to implement, interpret or make specific Sections 29 and 2915 of said Code, the board is considering changes to Division 13.1 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The continuing education a licensee accrues must be related to the assessment, diagnosis, and intervention for the client population being served pursuant to section 2915(h) of the Business and Professions Code. The board makes an ongoing effort to ensure that a variety of quality continuing education courses, relevant to a licensed psychologists' scope of practice, are available. By increasing the availability of acceptable quality continuing education courses,

licensees will have a greater variety of courses from which to choose that best suit their area of practice.

This proposal would expand the variety and number of courses available by specifically recognizing the American Psychological Association, the California Medical Association, the Accreditation Council for Continuing Medical Education, and the Academies of the specialty boards of the American Board of Professional Psychology to perform accrediting functions.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact: The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

AND

The following studies/relevant data were relied upon in making the above determination: N/A

Impact on Jobs/New Businesses: The board has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business: The board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Effect on Housing Costs: None

EFFECT ON SMALL BUSINESS

The board has determined that the proposed regulation would affect small businesses.

CONSIDERATION OF ALTERNATIVES

The board must determine that no reasonable alternative it considered to the regulation or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Board of Psychology at 1422 Howe Avenue, Suite 22, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Name: Kathy Bradbury
Address: 1422 Howe Avenue, Suite 22
Sacramento, CA 95825
Telephone No.: (916) 263-0712
Fax No.: (916) 263-2697
E-Mail Address: kathy_bradbury@dca.ca.gov

The backup contact person is:

Name: Jeffrey Thomas
Address: 1422 Howe Avenue, Suite 22
Sacramento, CA 95825
Telephone No.: (916) 263-1617
Fax No.: (916) 263-2697
E-Mail Address: jeff_thomas@dca.ca.gov

WEBSITE ACCESS

Materials regarding this proposal can be found at www.psychboard.ca.gov.

TITLE 22. OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS

ACTION

Notice of proposed rulemaking.

SUBJECT

Charge Description Master Reporting

PUBLIC PROCEEDINGS

NOTICE IS HEREBY GIVEN that the Office of Statewide Health Planning and Development (hereafter the "Office") proposes to add Sections 96000 through 96025 to Title 22 of the California Code of Regulations related to the submission of hospital charge description masters and related documents.

AUTHORITY AND REFERENCE

The Director of the Office, pursuant to Section 11152 of the Government Code, has the authority to adopt rules and regulations necessary to govern the activities of the Office.

The Office, pursuant to Sections 1339.55 and 1339.56 of the Health and Safety Code, must determine the format that each hospital is required to use to submit its charge description master, estimate of the change in gross revenue due to price increases with supporting calculations, and list of 25 common services or procedures.

WRITTEN COMMENT PERIOD

NOTICE IS ALSO GIVEN that no public hearings are scheduled to be held. Interested parties may submit written comments presenting statements, arguments, or contentions relating to the proposed action. All comments must be received by the Office by 5:00 p.m. on February 4, 2005, which is designated as the close of the written comment period. A public hearing will be held if, no later than 15 days prior to the close of the written comment period, an interested person, or his or her duly authorized representative, submits a written request to hold a public hearing to the Contact Person (see Contact Person and address below).

CONTACT PERSON

General and substantive inquiries and comments concerning the proposed regulations may be addressed to Kenrick J. Kwong, Manager, Accounting and Reporting Systems Section, Office of Statewide Health Planning and Development, 818 K Street, Room 400, Sacramento, California 95814 (telephone: 916-323-7681; fax: 916-327-0377; e-mail: kkwong@oshpd.ca.gov). The Office's backup contact

person is Tim Pasco, Systems Analyst, Hospital Financial Data Unit, Office of Statewide Health Planning and Development, 818 K Street, Room 400, Sacramento, California 95814 (telephone: 916-323-1955; fax: 916-327-0377; e-mail: tpasco@oshpd.ca.gov).

POLICY STATEMENT OVERVIEW / INFORMATIVE DIGEST

The Payers' Bill of Rights of 2003 (California Health and Safety Code Sections 1339.50 through 1339.59) requires the Office to collect charge description masters and related documents from California hospitals. The purpose of these statutes is to provide patients, health plans, and healthcare purchasers with more information about the prices charged by hospitals for their services, goods, and procedures. As part of its responsibility, the Office must identify acceptable electronic file types and methods of submission of hospital charge description masters and related documents.

The purpose of the proposed regulations is to identify the electronic file formats and methods of submission that hospitals must use to file the documents that are required by Health and Safety Code Sections 1339.55 and 1339.56 with the Office.

FISCAL IMPACT ESTIMATES

- A. Estimate of Cost or Savings to Any State Agency (Cal. Gov't Code § 11346.5(a)(6)): None.
- B. Cost to Any Local Agency or School District That is Required to be Reimbursed by the State (Cal. Gov't Code § 11346.5(a)(6)): None.
- C. Non-Discretionary Cost or Savings Imposed on Local Agencies (Cal. Gov't Code § 11346.5(a)(6)): None.
- D. Cost or Savings in Federal Funding to the State (Cal. Gov't Code § 11346.5(a)(6)): None.
- E. Impact on Housing Costs (Cal. Gov't Code § 11346.5(a)(12)): None.
- F. Potential Cost Impact on Private Persons or Affected Business, Other Than Small Businesses (Cal. Gov't Code § 11346.5(a)(9)): The Office is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The only cost to hospitals is that of submitting electronic files of existing documents. Submission to the Office is required by Health and Safety Code Sections 1339.55 and 1339.56.

DETERMINATIONS

As required by Government Code Section 11346.5(a)(5), the Office has determined that the proposed regulations will impose requirements on all

California hospitals, except chemical dependency recovery hospitals and psychiatric health facilities, and will only incidentally affect government hospitals. There is no local mandate created by these proposed regulations which would require state reimbursement required by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

As required by Government Code Section 11346.5(a)(8), the Office has made an initial determination that the proposed regulations would not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Pursuant to Government Code Section 11346.3(b)(1), the Office has determined that the proposed regulations would not significantly affect the following:

- (A) The creation or elimination of jobs within the State of California;
- (B) The creation of new businesses or the elimination of existing businesses within the State of California; or
- (C) The expansion of businesses currently doing business within the State of California.

As required by Section 4 of Title 1 of the California Code of Regulations, the Office has determined that the proposed regulations will not affect small businesses as defined in Government Code Section 11342.610. All affected hospitals either have more than 150 beds, have annual gross receipts exceeding \$1,500,000, are not independently owned and operated, or are organized as nonprofit institutions.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF REGULATIONS

The Office prepared an Initial Statement of Reasons for the proposed regulations. The Initial Statement of Reasons, the text of the proposed changes (in italic and strikeout format), and the information in support of the proposed changes are available from the Office at the address indicated above (see Contact Person). In addition, the Initial Statement of Reasons and the text of the proposed changes will be available on the Office's web site at: www.oshpd.ca.gov/HID/AboutHID/laws.htm. The Office will notify all affected hospitals by e-mail or regular mail of the availability of the Initial Statement of Reasons and the text of the proposed changes.

Any person submitting a comment on the proposed regulations has the right to request a copy of the Final Statement of Reasons once it has been prepared from the Contact Person (see Contact Person).

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After the close of the public comment period or at the end of a public hearing, if one is requested and held, the Office may, without further notice, adopt the regulatory changes as proposed or adopt them with nonsubstantial or grammatical changes as it deems appropriate. If the Office intends to adopt the regulations with modifications, other than nonsubstantial or grammatical changes, the full text of the modified regulations will be made available to the public at least 15 days before they are adopted. A request for copies of modified regulations should be submitted to the Contact Person at the address noted above.

ALTERNATIVES

According to Government Code Section 11346.5(a)(12), the Office must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

TITLE 24. BUILDING STANDARDS COMMISSION

NOTICE OF PROPOSED CHANGES

TO BUILDING STANDARDS OF THE OFFICE
OF THE STATE FIRE MARSHAL (SFM)
REGARDING PROPOSED REGULATIONS TO
THE CALIFORNIA CODE OF REGULATIONS,
TITLE 24, PARTS 2 & 9

CALIFORNIA BUILDING CODE (CBC) &
CALIFORNIA FIRE CODE (CFC)
REGARDING GROUP R, DIVISION 2—
BEDRIDDEN RESIDENTIAL OCCUPANCIES

NOTICE IS HEREBY GIVEN that the California Building Standards Commission (CBSC) on behalf of the State Fire Marshal proposes to adopt, approve, codify, and publish building standards contained in the California Code of Regulations (CCR), Title 24, Part 2. The Office of the State Fire Marshal (SFM) is proposing to amend various Chapters, Articles and Sections of the 2001 California Building and Fire Codes regarding regulations relating to the fire and life safety requirements in residential care facilities licensed for six or less clients of which one may be bedridden as determined by the Department of Social Services.

PUBLIC HEARING/WRITTEN
COMMENT PERIOD

A public hearing has not been scheduled; however, written comments will be accepted from December 17, 2004 until 5:00 p.m. on January 31, 2005. Please address your comments to Jane Taylor, California Building Standards Commission, 2525 Natomas Park Drive, Suite 130, Sacramento, California 95833. Written comments may also be faxed to (916) 263-0959 or E-mailed to cbcs@dgs.ca.gov.

Pursuant to Government Code Section 11346.5(a) 17, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be held.

AUTHORITY AND REFERENCE

The CBSC proposes to adopt these building standards under the authority granted by Health and Safety Code § 18949.2. The purpose of these building standards is to implement, interpret, and make specific the provisions of Health and Safety Code § 18928.

The SFM is proposing this regulatory action pursuant to the following:

AUTHORITY

Health and Safety Code Sections 1531.3, 1566.45, 1568.0832, 1569.72, 13113, 13114 and 13143

REFERENCE

Health and Safety Code Sections 1566.45, 1568.0832, 13133 and 18949.2

INFORMATIVE DIGEST

Summary of Existing Laws

H&SC § 1531.3—This law mandates that the SFM establish separate fire and panic safety standards and criteria for the evaluation of each licensing category of H&SC section 1502, the SFM shall consider the characteristics of the person served by each facility in establishing these standards and criteria.

H&SC § 1566.45—This law provides a definition of “bedridden” that shall apply to residents of residential facilities with an occupant load of 6 or less that care for children, persons who are developmentally disabled and persons with other disabilities who are not developmentally disabled.

This bill stipulates that the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, shall make the determination of bedridden status of persons with developmental disabilities, after consulting the resident’s individual safety plan.

The Director of Social Services or his or her designated representative shall make the determination

of the bedridden status of all other persons with disabilities who are not developmentally disabled.

This law mandates that bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions is met:

- (1) The fire safety requirements are met.
- (2) Alternative methods of protection are approved.

H&SC § 1568.0832—This law provides a definition of “bedridden” that shall apply to residents of residential facilities with an occupant load of 6 or less that care for children, persons who are developmentally disabled and persons with other disabilities who are not developmentally disabled.

This bill stipulates that the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, shall make the determination of bedridden status of persons with developmental disabilities, after consulting the resident’s individual safety plan. The Director of Social Services or his or her designated representative shall make the determination of the bedridden status of all other persons with disabilities who are not developmentally disabled.

This law mandates that bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions is met:

- (1) The fire safety requirements are met.
- (2) Alternative methods of protection are approved.

H&SC § 1569.72—This law requires that no resident shall be admitted or retained in a residential care facility for the elderly if the resident requires 24-hour skilled nursing care, resident is bedridden, other than a temporary illness or for recovery from surgery. A bedridden resident may be admitted to and remain in a residential care facility for the elderly that secures that has and maintains the required fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions is met:

- (1) The fire safety requirements are met.
- (2) Alternative methods of protection are approved.

Temporary illness is any illness that persists for 14 days or less. A resident may be retained in a facility for the elderly for more than 14 days providing that the facility notifies the department in writing that the resident has a temporary illness or is recovering from surgery, a doctors written statement identifying that the resident’s illness or recovery is temporary and the

department determines that a higher level of care is not necessary to protect the health and safety of the resident. Within 48-hours the residential care facility shall notify the local fire authority of the resident's admission or retention in the facility identifying the residents location and estimated length of time in that facility. This section shall not be used to to determine the resident's level of care based on section 1569.70.

The State Fire Marshal and the Department of Developmental Services shall each promulgate regulations that meet the following conditions:

- (A) Are consistent with subsections (a) to (f)
- (B) Apply to facilities regulated under chapter 1569.72 and consistent with the California Building Standards Code for fire and life safety for respective occupancy classifications that Department of Social Services licensing classifications fall.
- (C) Permit residents to remain in a home-like setting

At a minimum these regulations shall do both of the following in regards to a residential care facility that provides care for six or fewer residents of whom at least one maybe bedridden:

- (A) Clarify the fire and life safety requirements for a fire clearance
- (B) Identify procedures for requesting an approval for alternate means of providing equivalent levels of fire protection. A request may be requested of the State Fire Marshal (SFM) to provide a written opinion for the interpretation of the regulations promulgated by the SFM. SFM is to issue the written opinion in 45-days following the request. Facilities that care for six or fewer residents, the local fire authority may not impose more strict requirements than those of the SFM, or local requirements imposed on any single family dwelling, which ever is more restrictive. This section and any promulgated regulations are to provide flexibility in allowing a bedridden person to avoid institutionalization and to be admitted and allowed to remain safely in a community-based care facility.

Section 4. It is the intents of the Legislature that regulations required by this act shall permit persons currently living in residential care facilities under a existing fire clearances on the effective date of this act are to remain in the facility provided the facility can safely care for the resident.

H&SC § 13113—This law requires the SFM to adopt regulations requiring the installation of automatic fire devices activated by combustion other than heat in all facilities which provide 24-hour per day care for 6 or fewer persons, and which do not have an automatic sprinkler system.

H&SC § 13114—This law requires the SFM with advice from the State Board of Fire Services to adopt regulations and standards as necessary to control the quality and installation of fire alarm devices sold in this state.

H&SC § 13133—This law requires the SFM to develop and adopt regulations that establish new occupancy classifications and specific fire standards appropriate for residential facilities that provide non-medical care for persons in need of personal services essential for sustaining the activities of daily living or for the protection of the individual and residential care facilities for the elderly.

H&SC § 13143—The SFM shall prepare and adopt regulations establishing minimum requirements for the prevention of fire and for the protection of life and property against fire and panic in any building or structure used or intended for use as an asylum, jail, mental hospital, hospital, home for the elderly, children's nursery, children's home or institution, school, or any similar occupancy of any capacity, and in any assembly occupancy where 50 or more persons may gather.

H&SC § 18949.2(b)—The State Fire Marshal shall remain the state agency responsible for developing building standards to implement the state's fire and life safety policy in the development of the state's codes related to fire and life safety.

Summary of Existing Regulations of the 2001 CBC

The SFM currently adopts by reference and enforces the 2001 California Code of Regulations, Title 24, Parts 2 and 9 with California Amendments relating to regulations that establish minimum requirements for the prevention of fire and for the protection of life and property against fire and in any building or structure used or intended for use as a school and or for the purposes of education as defined in Health and Safety Code 13143. Summary of Existing Regulations in the 2001 CBC:

- **Chapter 1—Administrative, Section 101 Title, Purpose and Scope, Section 101.14.17 SFM.** This existing section provides a detailed listing of the occupancies and statutes, which outlines the SFM's statutory authority to promulgate regulations relating to fire and life safety requirements to such occupancies.
- **Chapter 2—Definitions and Abbreviations, Section 203—B.** This existing section provides a definition for bedridden person.
- **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Section 310.1.** This existing section provides a definition for Group R, Divisions 2.1.1 and 2.2.1.

- **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Section 310.1.1.** This existing section addresses the requirements for retaining clients that become temporally bedridden as determined by the department of Social Services, in a Group R, Division 2 Occupancy.
- **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Section 310.1.2.** This existing section indicates that any Group R, Division 2 Occupancy shall not allow bedridden clients above the first story.
- **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Sections 310.1.3, 310.1.4 and 310.1.5.** These existing sections replicate the statutory requirements under Health and Safety Code sections 13143 and 13133 regarding facilities that are licensed by Department of Social Services and the scope of those facilities that provide nonmedical board, room and care for 6 or fewer clients.
- **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Section 310.1.6.** This existing section addresses the requirements for existing Residential Care Facilities and Residential Care Facilities for the Elderly that were pre-1991 CBC, may be reinspected under the original classification of Group I.
- **Chapter 4A—Special Use and Occupancy, Division II—Office of the State Fire Marshal.** This existing section addresses various special occupancies under the SFM’s authority that require special or unique standards that are specifically scoped to the use and or occupancy of the structure.
- **Chapter 8—Interior Finishes, Table 8-B—Maximum Flame Spread Class.** This existing table specifies the maximum material flame spread allowed per occupancy group for enclosed vertical exitways, exitways and rooms or areas.
- **Chapter 9—Fire Protection Systems, Section 904—Fire Extinguishing Systems, Section 904.2.10—Group R, Division 2 Occupancies.** This existing section addresses the requirements for an automatic sprinkler system installed in a Group R, Division 2 Occupancy.
- **Chapter 9—Fire Protection Systems, Section 904—Fire Extinguishing Systems, Section 904.2.10.1—Group R, Divisions 2.3 and 2.3.1 Occupancies.** This existing section addresses the requirements for the installation of an automatic sprinkler system in these occupancies.
- **Chapter 10—Means of Egress, Section 1003.3.1—Doors.** This existing section addresses the requirements for exit doors. **Section 1003.3.1.8**

Type of Lock and Latch. This existing section addresses the requirements for the type of locks or latches permitted to be installed on exit doors.

Summary of Effect to the 2001 CBC:

The mandates written into law under Sections 1569.72, 1566.45, and 1568.0832, of the Health and Safety Code are reflected in the SFM’s proposed regulations to the 2001 CBC and CFC as listed below. Also see Attachment A, titled “*SB 1896 CHECK-LIST.*” This checklist may be used for a side-by-side comparison between the mandates of the H&SC and the SFM’s proposed regulations.

The following amendments are proposed by the SFM:

1. **Chapter 1—Administrative, Section 101 Title, Purpose and Scope, Section 101.17.14 SFM.** The SFM is proposing to add the statutory references of the Health and Safety Code pertaining to the SFM’s statutory authority to promulgate regulations relating to fire and life safety requirements to residential occupancies caring for bedridden persons.
2. **Chapter 2—Definitions and Abbreviations, Section 203—B.** The SFM is proposing to amend this section by bringing in the definition of a bedridden person that correlates with the definition provided in the 2001 CBC in compliance with Health and Safety Code sections 1566.45 and 1568.0832
3. **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R.** The SFM is proposing to amend section 310.1 by adding regulatory text allowing bedridden clients in the licensing categories for Group R, Division 2.1.1 and 2.2.1.
4. **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Section 310.1.1.** The SFM is proposing to amend section 310.1.1 by repealing the existing text that addresses Residential Care Facilities for the Elderly (RCFE) requirements for persons who become temporally bedridden. The SFM is further amending this section by placing the correct H&SC section 1569.72 text in an exception that specifies that a person who has become temporally bedridden may remain in the existing facility for a limited time.
5. **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Section 310.1.2.** The SFM is proposing to amend this section by first, renumbering the existing section 310.1.2. to 310.1.1. Secondly, the SFM is proposing to amend this section by not permitting bedridden clients below the first story.
6. **Chapter 3—Use or Occupancy, Section 310—Requirements for Group R Occupancies, Sections 310.1.3, 310.1.4, 310.1.5 and 310.1.6.** The

SFM is proposing to amend these sections by renumbering each section because section 310.1.1 is proposed to be repealed thus resulting in a disruption to the numbering sequence for these sections.

7. Chapter 4A—Special Use and Occupancy, Division II—Office of the State Fire Marshal. The SFM is proposing to amend this Chapter by adding a new section, Section 415A. This section addresses the requirements for alternate means of protection that a licensee may use when requesting a bedridden fire clearance from the local fire authority having jurisdiction.

8. Chapter 8—Interior Finishes, Table 8-B. The SFM is proposing to amend this Table by adding Group R, Division 2 Occupancies. The SFM is also adding a footnote to the table specifying that under specified conditions Group R, Division 2 Occupancies shall comply with the maximum flame spread of interior finishes as required for Group I, Division 1.1 Occupancies.

9. Chapter 9—Fire Protection Systems, Section 904—Fire Extinguishing Systems, Section 904.2.10—Group R, Division 2 Occupancies. The SFM is proposing to amend this section by specifically allowing bedridden persons in Group R, Division 2.1.1 and 2.2.1 Occupancies. This existing section previously required that if a bedridden person was placed in these occupancy classifications, an automatic sprinkler system is required to be installed in all Group R, Division 2 Occupancies. This new amendment will allow only one bedridden client in the facility providing the facility complies with the regulations of the CBC and CFC. Additionally, the SFM is proposing to repeal exception number 2.

10. Chapter 9—Fire Protection Systems, Section 904—Fire Extinguishing Systems, Section 904.2.10.1. The SFM is proposing to repeal the existing text of this section and provide the correct references to the national standards of “National Fire Protection Association” NFPA for sprinkler systems in Group R, Division 2 Occupancies. The existing text indicates that a Group R, Division 2.3 Occupancy is permitted to use a residential system or quick response sprinklers. A “Residential Sprinkler” is in fact a “Quick Response Sprinkler” by design, and therefore, it is redundant to state Residential Quick Response. NFPA-13R and 13D are a “Life Safety System” while NFPA-13 is a “Property Protection and Life Safety System.” Because an R 2.3 Occupancy is a hospice facility accommodating more than six bedridden clients, it is vital that a NFPA 13 system is identified as being required in these occupan-

cies. A system designed in accordance with NFPA-13R and 13D allows for more areas to be unprotected where the NFPA-13 system has few exceptions and covers a greater area.

This system is required for structure protection to aid the structure from failing before the residents are evacuated. It will also provide a higher level of protection for the first responders to safely evacuate greater numbers of persons who are unable to self evacuate.

Although not mentioned in this amendment the same criteria for an R 2.3 automatic sprinkler system also applies to an R 2.1 which accommodates more than six nonambulatory and ambulatory persons even though it is not specifically called out in Section 904.2.10.

11. Chapter 10—Means of Egress, Section 1003.3.1—Doors, Section 1003.3.1.8 Type of Lock and Latch. The SFM is proposing to amend this chapter by adding a new section, Section 1003.3.1.8.1. This section specifies that no type of lock or latch requiring special knowledge to operate shall be installed on any interior door leading into a client’s sleeping room.

Summary of Existing Regulations in the 2001 CFC:

- **Article 1—Administrative, Section 101 Title, Purpose and Scope, Section 101.2.2 SFM.** This existing section provides a detailed listing of the occupancies and statutes, which outlines the SFM’s statutory authority to promulgate regulations relating to fire and life safety requirements to such occupancies.
- **Article 2—Definitions and Abbreviations, Section 203-B and 216-O.** This existing section provides definitions for certain terms and words that begin with the letter B and O.
- **Article 10—Fire Protection Systems and Equipment, Section 1006.2.9.1.1.** This existing section specifies the requirements regarding fire alarm systems in Group R, Divisions 2.1.1, 2.2.1, 2.3.1, and 6 Occupancies.
- **Article 10—Fire Protection Systems and Equipment, Section 1006.2.9.3.1.** This existing section specifies the requirements regarding single-station smoke alarms in existing Group R Occupancies.

Summary of Effect to the 2001 CFC:

The following amendments are proposed by the SFM:

- 1. Article 1—Administrative, Section 101 Title, Purpose and Scope, Section 101.2.2. SFM.** The SFM is proposing to add the statutory references of the Health and Safety Code pertaining to SFM’s

statutory authority to promulgate regulations relating to fire and life safety requirements to residential occupancies caring for bedridden persons.

2. **Article 2—Definitions and Abbreviations, Section 203—B.** The SFM is proposing to amend this section with the definition of a bedridden person from the Health and Safety Code section 1566.45 and 1568.0832.
3. **Article 2—Definitions and Abbreviations, Section 216—O.** The SFM is proposing to amend this section by bringing in the existing definitions from the 2001 CBC for Group R, Division 2.1, 2.1.1, 2.2, 2.2.1, 2.3 and 2.3.1. This amendment will provide the same definitions on this topic in both the 2001 CBC and CFC.
4. **Article 10—Fire Protection Systems and Equipment, Section 1006.2.9.1.1.** The SFM is proposing to amend this Article by adding a new section, Section 1006.2.9.1.7 which addresses the requirements for smoke alarms in Group R, Divisions 2.1.1 and 2.2.1 Occupancies housing bedridden clients.
5. **Article 10—Fire Protection Systems and Equipment, Section 1006.2.9.3.1** The SFM is proposing to amend this Article by adding an exception that requires that before a bedridden person is permitted in a Group R, Division 2.1.1 and 2.2.1 the licensee must comply with section, 1006.2.9.1.7.

COMPARABLE FEDERAL STATUTE OR REGULATIONS

The SFM has determined that there are no comparable federal regulations or statutes addressing the fire and life safety requirements for residential care facilities housing six or less clients and that opt to provide care for bedridden clients.

POLICY STATEMENT OVERVIEW

The broad objectives of these proposed regulations are to act in accordance with the Legislature's intent that the SFM promulgate fire and life safety regulations that will provide flexibility to a licensee when requesting a bedridden fire clearance from the local fire authority. This flexibility will avoid institutionalization of a bedridden person by allowing them to remain in or be admitted to a community-based residential care facility.

The specific objective of these proposed regulations are to specify the alternate means of protection that are required in an Group R, Division 2.1.1 and 2.2.1 Occupancy should a licensee choose to care for one bedridden person and not install an automatic fire sprinkler system.

OTHER MATTERS PRESCRIBED BY STATUTE APPLICABLE TO THE AGENCY OR TO ANY SPECIFIC REGULATION OR CLASS OF REGULATIONS

The SFM has determined that there is no other prescribed statute or any specific regulation or class of regulations applicable to bedridden clients in residential care facilities.

MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The SFM has determined that the proposed regulatory action would not impose a mandate on local agencies or public school districts.

ESTIMATE OF COST OR SAVINGS

- A. Cost or Savings to any state agency: **NO**
- B. Cost to any local agency required to be reimbursed under Part 7(commencing with Section 17500) of Division 4: **NO**
- C. Cost to any school district required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: **NO**
- D. Other nondiscretionary cost or savings imposed on local agencies: **NO**
- E. Cost or savings in federal funding to the state: **NO**

INITIAL DETERMINATION OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES

The SFM has made an initial determination that this proposed regulatory action would not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

DECLARATION OF EVIDENCE

The SFM affirms that this rulemaking action complies specifically with the mandates of Health and Safety Code sections 1566.45 and 1568.0832

Therefore, the SFM's initial determination of no significant, statewide adverse economic impact directly affecting business in California and their ability to compete with businesses in other states does not require any additional evidence, documents or other evidence to support this action.

FINDING OF NECESSITY FOR THE PUBLIC'S HEALTH, SAFETY, OR WELFARE

The SFM has made an assessment of the proposed code changes and has determined that these changes do not require a report.

COST IMPACT ON PRIVATE PERSON OR BUSINESS

The SFM has provided a conceptual description of cost impacts that a representative private person or

business would necessarily incur in reasonable compliance with the proposed action. See Attachment B—“*Conceptual Cost Estimate.*”

ASSESSMENT OF EFFECT OF REGULATIONS UPON JOBS AND BUSINESS EXPANSION, ELIMINATION OR CREATION

The SFM has assessed that adoption of these regulations will not:

- Create or eliminate jobs within California;
- Create new businesses or eliminate existing businesses within California; or
- Affect the expansion of businesses currently doing business within California.

INITIAL DETERMINATION OF SIGNIFICANT EFFECT ON HOUSING COSTS

The SFM has made an initial determination that these proposed regulations to the 2001 CBC and CFC will not have a significant effect on housing costs.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code § 11346.5 subdivision (a)(13), the SFM has determined that no reasonable alternative considered by it or that has been otherwise identified and brought to the attention of the SFM would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The SFM, through a public process prior to submitting the Finding of Emergency for SB 1896, investigated the following alternatives during the development of the emergency regulations:

1. **Automatic Sprinkler system throughout the residential care facility;**

The sponsors of the bill and various advocacy organizations for the owners of the facilities met this alternative with great opposition. The main opposition to this alternative was based on the perception that the cost to retrofit an existing residence with an automatic sprinkler system was cost prohibitive and many existing business would not be able to stay in business or that facilities would not consider providing services to bedridden clients because of the increased cost to house a bedridden person was unreasonable.

2. **Increased staffing in the residential care facility;**

This alternative would require additional statutory language to support an increase in staffing. The sponsors of the bill and various advocacy organizations for the owners of the facilities felt this alternative was unreasonable and not supported by current law.

3. **Regulations requiring the local fire authority to develop acceptable alternatives within their jurisdictions;**

This alternative was rejected by the local fire authorities that participated in the public process at the initial development of the emergency regulations. The workgroup agreed that the law was seeking a consistent enforcement approach for regulations, building standards relating to bedridden persons in residential care facilities.

AVAILABILITY OF RULEMAKING DOCUMENTS

All of the information upon which the proposed regulations are based is contained in the rulemaking file, which is available for public review, by contacting the person named below. This notice, the express terms and initial statement of reasons can be accessed from the California Building Standards Commission website:

<http://www.bsc.ca.gov/>

Interested parties may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or at the California Building Standards Commission website.

AVAILABILITY OF FINAL STATEMENT OF REASONS

At the conclusion of this rulemaking, a Final Statement of Reasons will be prepared as required by Government Code § 11346.9. This document will be available from the contact persons named above.

CBSC CONTACT PERSON FOR PROCEDURAL AND ADMINISTRATIVE QUESTIONS

General questions regarding procedural and administrative issues should be addressed to:

**Jane Taylor or
Tom Morrison (Back-up person)
2525 Natomas Park Drive, Suite 130
Sacramento, CA 95833
Telephone No.: (916) 263-0916
Facsimile No.: (916) 263-0959**

SFM CONTACT PERSONS FOR SUBSTANTIVE QUESTIONS ON THE PROPOSED BUILDING STANDARDS

Specific questions regarding the substantive aspects of the proposed building standards may be addressed to:

CONTACT PERSON

- Leslie R. Haberek
(916) 327-4998
Fax: (916) 445-8459

BACK-UP CONTACT PERSON

- Rodney Slaughter
(916) 445-8454
Fax: (916) 445-8459

POST-HEARING MODIFICATIONS TO THE
TEXT OF THE REGULATIONS

Following the public comment period, the CBSC may adopt the proposed regulations substantially as proposed in this notice or under mutual agreement with the SFM, modifications may be made that are sufficiently related to the original proposed text and notice of proposed regulatory action. If modifications are made, the full text of the proposed action with the changes clearly indicated would be made available to the public for at least 15 days prior to the date on which the CBSC adopts, amends, or repeals the regulation(s). The CBSC will accept written comments on the modified regulations during the 15-day period at the above-mentioned contacts.

**TITLE 28. DEPARTMENT OF
MANAGED HEALTH CARE**

ACTION

Notice of Proposed Rulemaking
Title 28, California Code of Regulations

SUBJECT

Outpatient Prescription Drug Copayments, Coinsurance, Deductibles, Limitations and Exclusions, Control #2002-0019, Adopting Section 1300.42.7 in Title 28, California Code of Regulations

PUBLIC PROCEEDINGS

Notice is hereby given that the Director of the Department of Managed Health Care (Director) proposes to adopt regulations under the Knox-Keene Health Care Service Plan Act of 1975 (Act) relating to outpatient prescription drug copayments, coinsurance, deductibles, limitations and exclusions by adopting section 1300.42.7 in title 28, California Code of Regulations. Before undertaking the action, the Director will conduct written public proceedings, during which time any interested person or such person's duly authorized representative may present statements, arguments or contentions relevant to the action described in this notice.

PUBLIC HEARING

No public hearing is scheduled. Any interested person, or his or her duly authorized representative, may request in writing, a public hearing pursuant to section 11346.8(a) of the Government Code. The request for hearing must be received in writing by the

Department of Managed Care's (Department) contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative may submit written statements, arguments or contentions (hereafter referred to as comments) relevant to the proposed regulatory action by the Department. Comments must be received by the Office of Legal Services, Department of Managed Health Care, by 5 p.m. on January 31, 2005, which is hereby designated as the close of the written comment period.

Comments may be transmitted by regular mail, FAX or email:

Email: regulations@dmhc.ca.gov

Mail Delivery: Regulation Coordinator
Department of Managed
Health Care
Office of Legal Services
980 9th Street, Suite 500
Sacramento CA 95814

Fax: (916) 322-3968

Please note, if comments are sent via email or fax, there is no need to send the same comments by mail delivery. All comments, including email, fax transmissions or mail delivery should include the author's name and U.S. Postal Service mailing address in order for the Department to provide copies of any notices for proposed changes in the regulation text on which additional comments may be solicited. Please address all comments to the Department of Managed Health Care, Office of Legal Services.

1. Inquiries regarding the substance of the proposed regulation described in this notice may be directed to Brian J. Bartow, Assistant Chief Counsel, at (916) 322-6727.
2. All other inquiries concerning the action described in this notice may be directed to Elaine Paniewski, Staff Service Analyst, at (916) 322-6727.

CONTACTS

Please identify the action by using the Department's regulation control number and title, **2002-0019 Outpatient Prescription Drug Copayments, Coinsurance, Deductibles, Limitations and Exclusions** in any of the above inquiries.

AVAILABILITY OF DOCUMENTS

Materials regarding the proposed regulations (including this public notice, the proposed regulations, and the Initial Statement of Reasons) are available via the internet. The documents may be accessed at <http://www.hmohelp.ca.gov/library/regulations/> under

the heading Proposed Regulations. The Department's Office of Legal Services maintains the rulemaking file in accordance with the Administrative Procedure Act. At the present time, the rulemaking file consists of the text of the regulations, the initial statement of reasons, and the notice. The rulemaking file is available for public inspection at the Department of Managed Health Care, Office of Legal Services, 980 9th Street, Suite 500, Sacramento, CA 95814. To view the file, please call to make an appointment: (916) 322-6727.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Health and Safety code sections 1344 and 1346 vest the Director with the power to administer and enforce the provisions of the Act.

California Health and Safety Code section 1344 mandates that the Director have the ability to adopt, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this chapter, including rules governing applications and reports, and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of the Act. Furthermore, the Director may waive any requirement of any rule or form in situations where in the Director's discretion such requirement is not necessary in the public interest or for the protection of the public, subscribers, enrollees, or persons or plans subject to this chapter. In addition, the Director may honor requests from interested parties for interpretive opinions.

California Health and Safety Code section 1346 vests in the Director the power to administer and enforce the Act, including but not limited to recommending and proposing the enactment of any legislation necessary to protect and promote the interests of plans, subscribers, enrollees, and the public.

SB 842 added section 1342.7 and amended sections 1367.215, 1367.24, 1367.25, 1367.45, 1367.51 and 1374.72 of the Health and Safety Code specifying procedures for plans to request approval from the Department for a copayment, deductible, limitation, or exclusion to its prescription drug benefits and requires the Department to adopt regulations outlining the standards it uses in reviewing these requests.

These regulations clarify and make specific the requirements of SB 842. These regulations will give notice to plans and enrollees of the standards for the establishment, maintenance and management of prescription drug formularies and benefits offered by health care service plans.

These regulations assist the Department in regulating the health plans by ensuring that plans are in compliance with the Act when the plans provide coverage for outpatient prescription drugs.

AUTHORITY:

Health and Safety Code sections 1342.7, 1344, and 1346

REFERENCE:

Health and Safety Code section 1342, 1343.5, 1363, 1367.215, 1367.24, 1367.25, 1367.45, 1367.51 and 1374.72

AVAILABILITY OF MODIFIED TEXT:

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulations. A request for a copy of any modified regulation(s) should be addressed to Elaine Paniewski, Staff Service Analyst, at (916) 322-6727. The Director will accept written, faxed or e-mailed comments on the modified regulation(s) for 15 days after the date on which they are made available. The Director may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Elaine Paniewski, Staff Service Analyst, at (916) 322-6727 or available on the internet at <http://www.hmohelp.ca.gov/library/regulations/> under the heading Proposed Regulations.

ALTERNATIVES CONSIDERED

Pursuant to Government Code section 11346.5(a)(13), the Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified or brought to its attention, would be more effective in carrying out the purpose for which the above action is proposed, or would be as effective and less burdensome to affected private persons than the proposed actions.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulation during the public comment period.

FISCAL IMPACT STATEMENT

- Mandate on local agencies and school districts: None
- Cost or Savings to any State Agency: None
- Direct or Indirect Costs or Savings in Federal Funding to the State: None
- Cost to Local Agencies and School Districts Required to be Reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None

- Costs to private persons or businesses directly affected: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Effect on Housing Costs: None
- Other non-discretionary cost or savings imposed upon local agencies: None

DETERMINATIONS

The Department has determined that the regulations would not impose a mandate on local agencies or school districts, nor are there any costs requiring reimbursement by Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

The Department has determined that the regulations will have no impact on housing costs.

The Department has determined that the regulations do not affect small businesses. Health care service plans are not considered a small business under Government Code section 11342(h)(2).

The Department has determined that the regulations will not significantly affect the creation or elimination of jobs within the State of California.

The Department has determined that the regulations will not significantly affect the creation of new businesses, or the elimination of existing businesses within the State of California.

The Department has determined that the regulations will not significantly affect the expansion of businesses currently doing business within the State of California.

The Department has determined that the regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses currently doing business within the State of California.

FINDING REGARDING REPORTING REQUIREMENT

Government Code section 11346.3(c) provides as follows:

“No administrative regulation adopted on or after January 1, 1993, that requires a report shall apply to businesses, unless the state agency adopting the regulation makes a finding that it is necessary for the health, safety, or welfare of the people of the state that the regulation apply to businesses.”

All reporting requirements included in these regulations do apply to businesses because the Department has determined that the regulations are necessary to maintain the health, safety and welfare of the people of the State of California.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT, AND RULEMAKING FILE

The Department has prepared and has available for public review the following documents:

1. Initial Statement of Reasons
2. Text of proposed regulations
3. All information upon which the proposal is based (rulemaking file)

This information is available by request at the Department of Managed Health Care, Office of Legal Services, 980 9th St., Sacramento, CA 95814, or on our website at

<http://www.hmohelp.ca.gov/library/regulations/>, under the heading, Proposed Regulations.

GENERAL PUBLIC INTEREST

DEPARTMENT OF CORPORATIONS

REQUEST FOR INFORMATION REGARDING THE CALIFORNIA CORPORATE DISCLOSURE ACT OF 2002

The Department of Corporations requests comments and information regarding the California Corporate Disclosure Act of 2002, as amended (the “Act”). See Corporations Code Sections 1502 and 2117 as amended by Assembly Bill 55 (Chapter 1015, Statutes of 2002) and Corporations Code Sections 1502.1 and 2117.1 as added by Assembly Bill 1000 (Chapter 819, Statutes of 2004). As the state securities regulator for California, the Department of Corporations has undertaken a cost-benefit study of the efficacy of the Act in providing corporate disclosure to investors at the request of the Office of the Governor.

PURPOSE

BACKGROUND

In response to numerous corporate financial scandals and in the wake of the federal Sarbanes-Oxley Act of 2002,¹ California originally enacted the Act on September 27, 2002. The Act requires certain publicly traded corporations to make certain annual disclosures to the California Secretary of State within 150 days of the end of such corporation’s fiscal year.

Specific disclosures required under the Act by publicly traded corporations include:

- (1) The name of the independent auditor that prepared the most recent auditor’s report on the corporation’s annual financial statements;
- (2) A description of other services, if any, performed for the corporation during its two most recent

fiscal years and the period between the end of its most recent fiscal year and the date of the statement by the foregoing independent auditor, by its parent corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation;

- (3) The name of the independent auditor employed by the corporation on the date of the statement, if different from the independent auditor listed pursuant to paragraph (1);
- (4) The compensation for the most recent fiscal year of the corporation paid to each member of the board of directors and paid to each of the five most highly compensated executive officers of the corporation who are not members of the board of directors, including the number of any shares issued, options for shares granted, and similar equity-based compensation granted to each of those persons. If the chief executive officer is not among the five most highly compensated executive officers of the corporation, the compensation paid to the chief executive officer shall also be included;
- (5) A description of any loan, including the amount and terms of the loan, made to any member of the board of directors by the corporation during the corporation's two most recent fiscal years at an interest rate lower than the interest rate available from unaffiliated commercial lenders generally to a similarly-situated borrower;
- (6) A statement indicating whether an order for relief has been entered in a bankruptcy case with respect to the corporation, its executive officers, or members of the board of directors of the corporation during the 10 years preceding the date of the statement;
- (7) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the 10 years preceding the date of the statement, if the conviction has not been overturned or expunged;
- (8) A description of any material pending legal proceedings, other than ordinary routine litigation incidental to the business, to which the corporation or any of its subsidiaries is a party or of which any of their property is the subject, as specified by Item 103 of Regulation S-K of the Securities and Exchange Commission (Section 229.103 of Title 12 of the Code of Federal Regulations); and
- (9) A description of any material legal proceeding during which the corporation was found legally liable by entry of a final judgment or final order

that was not overturned on appeal during the five years preceding the date of the statement.²

The Act requires that each corporation submitting such information certify that such information is true and correct.³ The Act applies to any publicly traded corporation that is either a California corporation or is a foreign corporation that has qualified to transact intrastate business in California, regardless of whether such corporation has any actual shareholders or beneficial owners who reside in California.⁴

As originally introduced, the Act was passed by the Legislature after being considered during the closing days of the 2002 legislative session. As a result of the brief consideration period, the Act was not fully reviewed by all interested parties prior to becoming law. Subsequently, certain provisions of the Act were criticized as confusing or imposing unnecessary costs on publicly traded corporations, especially where the disclosure requirements of the Act differed from the disclosure requirements under the federal securities laws.

After a two-year effort to revise and clarify its provisions, the Act was amended by A.B. 1000 (Chapter 819, Statutes of 2004), which harmonized some, but not all, of the Act's disclosure requirements with the federal securities laws.⁵ In approving A.B. 1000 on September 27, 2004, Governor Schwarzenegger stated:

"The California Corporate Disclosure Act requires publicly traded companies to disclose detailed information to the Secretary of State, most of which is already publicly available through the Securities and Exchange Commission. California is the only state in the nation to impose these burdensome and duplicative reporting requirements on business.

Although this bill does begin to fix the problems with the California Corporate Disclosure Act, I am directing the Department of Corporations to review the efficacy of the California Corporate Disclosure Act and, if appropriate, to consider sponsoring legislation to eliminate the duplicative requirements and further align its provisions with federal reporting requirements."⁶

In the 2003–2004 legislative session, attempts were made to further increase the amount of disclosure provided to the Secretary of State by publicly traded corporations. Assembly Bill 2752 sought to require publicly traded corporations to file their corporate elections procedures with the Secretary of State. A.B. 2752 was passed by the legislature, but vetoed by Governor Schwarzenegger on September 22, 2004.⁷

FEDERAL REGULATION AND DISCLOSURE REQUIREMENTS

The Securities Exchange Act of 1934, as amended (the "Exchange Act"),⁸ imposes a continuous disclosure requirement on companies registered under the Exchange Act.⁹ Public reporting companies are required to electronically file financial statements and other information with the Securities and Exchange Commission ("SEC") through its Electronic Data Gathering, Analysis and Retrieval system ("EDGAR").¹⁰ Filings made on EDGAR are available at all times and without cost to the public through the SEC's website at www.sec.gov.

Principal reports required to be filed electronically via EDGAR with the SEC by public reporting companies include:

- An annual report on Form 10-K or Form 10-KSB;¹¹
- Quarterly reports on Form 10-Q or Form 10-QSB;¹² and
- Current reports on Form 8-K.¹³

Other filings made by, or relating to, public reporting companies are also filed electronically and available on EDGAR. These include proxy and tender offer solicitation materials,¹⁴ reports of shareholder ownership,¹⁵ and reports of transactions involving directors, officers and significant shareholders.¹⁶ Public reporting companies must file numerous other documents electronically on EDGAR as exhibits to their SEC-mandated reports—such as articles of incorporation, bylaws, material contracts, and codes of ethics—which are also accessible to the public on the SEC's website.¹⁷

Since its inception, the primary goals of EDGAR have been to facilitate the rapid dissemination of financial and business information about companies and other parties participating in U.S. capital markets, while making the delivery and the SEC's processing of filings more efficient. The SEC has concluded that mandated electronic filing benefits both members of the investing public and the financial community by making available to them information contained in SEC filings within minutes after filing.¹⁸ Over the years, the SEC has continually made system upgrades and revisions to EDGAR.¹⁹

In October 1996, President Clinton signed the National Securities Markets Improvement Act ("NSMIA"),²⁰ noting that, as a result of the legislation apportioning responsibilities between the federal government and the states, "the SEC will be charged with responsibility for activities in the

national markets, such as regulation of securities listed on the national exchanges."²¹ NSMIA recognized that the development and growth of the U.S. capital markets had created a national market for certain securities offerings,²² which should be subject to solely federal regulation (other than with respect to the application of state antifraud authority).²³ In enacting NSMIA, Congress recognized that the then-existing dual system of federal and state securities regulation had resulted in a certain amount of duplicative and unnecessary regulation, which tended "to raise the cost of capital to American issuers of securities without providing commensurate protection to investors or to our markets."²⁴

PURPOSE

Accordingly, the purpose of this request is to solicit information to assist the Department of Corporations in reviewing:

- The effectiveness of the Act in protecting California investors against securities and investment fraud and providing enhanced transparency and corporate disclosure in the financial marketplace;
- The costs and other burdens imposed on publicly traded corporations (and, indirectly, the shareholders of such corporations) by the Act; and
- The cost-effectiveness of alternative methods of disclosing the information required by the Act, including through filings required and disseminated by federal regulators.

FOCUS OF COMMENTS

The Department of Corporations requests interested parties to focus their comments on any or all of the following questions, in addition to providing any other relevant information:

1. Is the Act necessary? If so, why?
2. Does the Act duplicate or conflict with other laws or programs? If so, should the Act's duplicative requirements be eliminated?
3. Whether the Act should further conform with federal reporting requirements? If so, how?
4. Have other states enacted, or are contemplating the enactment of, corporate disclosure requirements similar to the Act's requirements?
5. What are the program and fiscal impacts to the Secretary of State and the State of California in administering the Act?
6. What are the benefits to investors and other third parties filing disclosure documents with the Secretary of State under the Act?
7. What are the burdens (including costs of compliance) of the Act on publicly traded corporations filing under its provisions?

8. How does the Act impact:
 - a. California's business climate in general?
 - b. The ability of California businesses to compete with businesses in other states?
 - c. The creation or elimination of jobs in California?
 - d. Businesses currently operating in California?
9. What alternative (including modifications or revisions to EDGAR) are available that would:
 - a. Be more effective in carrying out the purpose of the Act?
 - b. Be as effective but less burdensome to any affected business than the Act?
 - c. Lessen any adverse impact on small business?

WRITTEN COMMENTS

Any interested party may submit written comments to the Department of Corporations. Please reference PRO 03/05 in written comments to the Department and submit them by **January 14, 2005** (or as early as possible) to:

Kathy Womack
Office of Law and Legislation
Department of Corporations
1515 K Street, Suite 200
Sacramento, CA 95814

Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax at (916) 322-3205.

The Department may, but is not required to, hold one or more informational hearings regarding the subject matter of this request for information.

CONTACT PERSON

Inquiries regarding this Request for Information may be directed to Timothy L. Le Bas at (916) 322-3553.

ENDNOTES

- ¹ Pub. L. No. 107-204, 116 Stat. 745 (2002). Among other reforms, the Sarbanes-Oxley Act created the Public Company Accounting Oversight Board, established certain standards for auditor independence, imposed additional disclosure requirements and corporate governance reforms, and enhanced penalties for securities law violations.
- ² Cal. Corp. Code §§ 1502.1(a) and 2117.1(a).
- ³ Cal. Corp. Code §§ 1502.1(d) and 2117.1(d).
- ⁴ Section 1502.1(b)(1) of the Corporations Code defines a "publicly traded corporation" for domestic corporations as "a corporation, as defined in Section 162, that is an issuer as defined in Section 3 of the Securities Exchange Act of 1934, as amended (15 U.S.C. Sec. 78c), and has at least one class of securities listed or admitted for trading on a national securities exchange, on the National or Small-Cap Markets of the NASDAQ Stock Market, on the OTC-Bulletin Board, or on the electronic service operated by Pink Sheets, LLC." Section

2117.1(b)(1) of the Corporations Code provides a comparable definition for foreign corporations qualified to do business in California.

- ⁵ For instance, the Act requires disclosure of fraud convictions and bankruptcy proceedings for the prior 10 years whereas the federal securities laws require disclosure for only the prior five years. Compare Cal. Corp. Code §§ 1502.1(a)(6)-(7) and 2117.1(a)(6)-(7) with Item 401(f) of Regulation S-K (17 C.F.R. § 229.401(f)).
- ⁶ Available at http://www.governor.ca.gov/govsite/pdf/press_release/AB_1000_sign.pdf.
- ⁷ Veto message available at http://www.governor.ca.gov/govsite/pdf/vetoes/AB_2752_veto.pdf.
- ⁸ 15 U.S.C. §§ 78a et seq.
- ⁹ Section 13(a) of the Exchange Act (15 U.S.C. § 78m(a)). A company must register under the Exchange Act if its securities are (i) traded on a national securities exchange or (ii) its equity securities are held by more than 500 holders of record and the company has total assets in excess of \$10 million, pursuant to Sections 12(a) and 12(g) of the Exchange Act (15 U.S.C. §§ 78l(a) and 78l) and Rule 12g-1 of the Exchange Act (17 C.F.R. 240.12g-1).
- ¹⁰ See Rule 101(a) of Regulation S-T (17 C.F.R. § 232.101(a)). The SEC began to mandate electronic filings through EDGAR in early 1993. Filers must prepare electronic filings in accordance with the procedures and technical formatting requirements set forth in the EDGAR Filer Manual promulgated by the SEC. See generally *Electronic Filing and the EDGAR System: A Regulatory Overview* (November 14, 2000) available at <http://www.sec.gov/info/edgar/overview1100.htm>.
- ¹¹ Rule 13a-1 of the Exchange Act (17 C.F.R. § 240.13a-1).
- ¹² Rule 13a-13 of the Exchange Act (17 C.F.R. § 240.13a-13).
- ¹³ Rule 13a-11 of the Exchange Act (17 C.F.R. § 240.13a-11).
- ¹⁴ Rule 14a-6 of the Exchange Act (17 C.F.R. § 240.14a-6) and Rule 14d-3 of the Exchange Act (17 C.F.R. § 240.14d-3).
- ¹⁵ Rule 13d-1 of the Exchange Act (17 C.F.R. § 240.13d-1).
- ¹⁶ 16 Rule 16a-3 of the Exchange Act (17 C.F.R. § 240.16a-3).
- ¹⁷ See Item 601 of Regulation S-K (17 C.F.R. § 229.601).
- ¹⁸ See *Mandated Edgar Filing for Foreign Issuers*, Securities Act Release No. 33-8016, 66 Fed. Reg. 50743 (Oct. 4, 2001).
- ¹⁹ See *Adoption of Updated EDGAR Filer Manual*, Securities Act Release No. 33-8454, 69 Fed. Reg. 49803, 49804 n. 4 (Aug. 12, 2004).
- ²⁰ Pub. L. No. 104-290, 110 Stat. 3416 (1996).
- ²¹ Statement on Signing the National Securities Markets Improvement Act of 1996, 32 Weekly Comp. Pres. Doc. 2038 (Oct. 14, 1996).
- ²² See NSMIA § 102(a) (defining certain securities as "covered securities," including securities issued by companies listed on the New York Stock Exchange, the American Stock Exchange, and the Nasdaq National Market System).
- ²³ See H.R. Conf. Rep. No. 104-864, at 39-40 (1996).
- ²⁴ Id. at 39.

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

NOTICE TO INTERESTED PARTIES

**Announcement of a Public Workshop and
Extension of a Previously Announced Comment
Period on the Draft Child-Specific Reference
Doses (chRD) for Pentachlorophenol and
Manganese for Use in Assessing Health Risks at
Existing and Proposed School Sites**

The Office of Environmental Health Hazard Assessment (OEHHA) of the California Environmental Protection Agency is announcing a public workshop on the draft chRDs on pentachlorophenol and manganese. The basis of these chRDs is presented in the draft report "Development of Health Criteria for School Site Risk Assessment Pursuant to Health and Safety Code Section 901(g): PROPOSED CHILD-SPECIFIC REFERENCE DOSE (chRD) FOR SCHOOL SITE RISK ASSESSMENT, Manganese and Pentachlorophenol," which was previously released for public review December 3, 2004.

Health and Safety Code (HSC), Section 901(g) requires the Office of Environmental Health Hazard Assessment (OEHHA), in consultation with the appropriate entities within the California Environmental Protection Agency, to identify those chemical contaminants commonly found at school sites and determined by OEHHA to be of greatest concern based on child-specific physiological sensitivities. HSC 901(g) also requires OEHHA to annually evaluate and publish, as appropriate, numerical health guidance values or chRDs for those chemical contaminants until the contaminants identified have been exhausted.

The public workshop will be held from 10 AM to 12 PM on January 14, 2005, in the Sierra Hearing Room on the second floor of the Joe Serna (Cal/EPA headquarters) Building, 1001 I Street, Sacramento, California, to discuss the proposed chRDs on pentachlorophenol and manganese. OEHHA follows the requirements set forth in Health and Safety Code, Section 57003, for conducting the workshop and receiving public input. Oral and written comments received at the workshop and during the comment period will be considered during the revision of the draft document. Because there will be no official transcript of the meeting, we recommend that oral comments also be submitted in writing. Written comments must be received at OEHHA by 5:00 p.m. on January 31, 2005, to be considered. This is an extension of the previously announced comment period for this draft report.

If you would like to receive further information on this announcement or have questions, please contact

our office at (916) 324-2829 or the address below. Written requests or comments should be addressed to:

Mr. Leon Surgeon
Integrated Risk Assessment Section
Office of Environmental Health Hazard Assessment
P.O. Box 4010
1001 I Street
Sacramento, California 95812-4010
FAX: (916) 322-9705

PROPOSITION 65

**CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT**

**SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(Proposition 65)**

**AVAILABILITY OF THE FINAL
PRIORITIZATION PROCESS DOCUMENT**

This notice announces the availability of the final prioritization process document to be used by the Office of Environmental Health Hazard Assessment (OEHHA) to identify candidate chemicals to be considered by Carcinogen Identification Committee (CIC) and Developmental and Reproductive Toxicant Identification Committee (DARTIC) for possible listing under Proposition 65 (The Safe Drinking Water and Toxics Enforcement Act of 1986, codified at Health and Safety Code section 25249.5). Over the past two years, an informal workgroup comprised of OEHHA staff and a few members of the CIC and DARTIC worked collaboratively on revising the 1997 Prioritization Procedure to more efficiently identify candidate chemicals to be evaluated by the Committees. After receiving comments from various interested parties, and revising the prioritization process document based upon those comments and input from the workgroup, the document is finalized and will be implemented by OEHHA effective the release date of the document, December 17, 2004.

The prioritization process laid out in this document is the outcome of the two-year process involving the workgroup's activities leading to a draft prioritization process, and subsequent input by the CIC, DARTIC, and the public. Two public comment periods (see May 28, 2004 public notice in the *California Regulatory Notice Register (CRNR)* (Register 2004, No. 22-Z) and September 3, 2004 public notice in the *CRNR* (Register 2004, No. 36-Z)) and a public workshop were held. The prioritization process was

discussed and endorsed by the CIC at their November 1, 2004 public meeting and the DARTIC at their November 4, 2004 public meeting, after hearing public comment.

The final document is available from the Internet at <http://www.oehha.ca.gov/prop65.html> or the Proposition 65 Implementation Office at, Office of Environmental Health Hazard Assessment, Street Address: 1001 I Street, Sacramento, California 95814, Mailing Address: P.O. Box 4010, Sacramento, California 95812-4010, (916) 445-6900 or (916) 323-8803 (FAX).

SUMMARY OF REGULATORY ACTIONS

REGULATIONS FILED WITH SECRETARY OF STATE

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA, 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

AIR RESOURCES BOARD

Verification Procedure Requirements 2003

This action amends the verification procedures, warranty, and in-use compliance requirements for diesel emission control strategies.

Title 13

California Code of Regulations

AMEND: 2701, 2702, 2703, 2704, 2705, 2706, 2707, 2709

Filed 12/02/04

Effective 01/01/05

Agency Contact: Kirk C. Oliver (916) 322-6533

BOARD OF EDUCATION

Instructional Materials Follow-Up Adoptions

This action specifies the procedure, materials and fee required of publishers and manufacturers of instructional materials requesting California adoption of their basic educational materials in a proceeding known as a follow-up adoption as provided for in Education Code section 60227.

Title 5

California Code of Regulations

ADOPT: 9517.1 AMEND: 9515, 9517

Filed 12/08/04

Effective 01/07/05

Agency Contact: Debra Strain (916) 319-0641

BOARD OF PILOT COMMISSIONERS

Pilot Trainee Selection / Continuing Professional Development

This regulatory action amends provisions of the pilot trainee selection process and the continuing professional development program.

Title 7

California Code of Regulations

AMEND: 213, 218

Filed 12/06/04

Effective 01/05/05

Agency Contact:

Captain Patrick A. Moloney (415) 397-2253

DEPARTMENT OF ALCOHOL AND DRUG PROGRAMS

DUI Administrative Requirements

The regulatory action deals with administrative requirements for the Driving Under the Influence Program

Title 9

California Code of Regulations

ADOPT: 9805, 9868 AMEND: 9801, 9801.5, 9804, 9812, 9820, 9824, 9848, 9867, 9878

Filed 12/06/04

Effective 01/05/05

Agency Contact: Mary Conway (916) 327-4742

DEPARTMENT OF CONSUMER AFFAIRS

Security Guard Training Requirements

This rulemaking action makes permanent an emergency rulemaking action that specifies curricula for the security guard standard course and security guard power to arrest course trainings required by Business and Professions Code sections 7583.6 and 7583.7. The regulation specifies subjects to be taught, the number of hours of training in each subject, course objectives, and the contents of certificates of completion. The permanent action also adopts continuing education requirements for licensed security guards.

Title 16

California Code of Regulations

ADOPT: 643

Filed 12/06/04

Effective 12/06/04

Agency Contact:

Noreene DeKoning (916) 323-1180

DEPARTMENT OF JUSTICE

Commercial Requestor Account Bond

The Department of Justice is amending the commercial requestor account bond re the Department of Motor Vehicles. The bond is listed at title 11, California Code of Regulations, section 51.16.

Title 11

California Code of Regulations

AMEND: 51.16

Filed 12/07/04
Effective 01/06/05
Agency Contact: Anne M. Burr (415) 703-1403

DEPARTMENT OF JUSTICE

Reserve Fund Statute—Complementary Legislations AB 71

This rulemaking action makes permanent the emergency regulations that amend the procedures to be followed by all tobacco product manufacturers that wish to sell cigarettes or roll your own tobacco in California. The amendments add definitions, revise forms, establish a process to apply for listing on the Attorney General's Directory of Tobacco Product Manufacturers and Brand Families, establish a process for supplemental listings, establish record retention requirements, establish requirements for more frequent installment escrow deposits for certain non-participating manufacturers, establish requirements for appointment or termination of agents for service of process, establish duties and defenses of California Distributors, and establish a procedure for applying for relisting of brand families and tobacco product manufacturers.

Title
California Code of Regulations
ADOPT: 999.15, 999.16, 999.17, 999.18, 999.19, 999.20, 999.21, 999.22, 999.23 AMEND: 999.10, 999.11, 999.12, 999.13, 999.14 REPEAL: Appendix A
Filed 12/06/04
Effective 12/06/04
Agency Contact:
William F. Soo Hoo (916) 323-3853

DEPARTMENT OF MOTOR VEHICLES

Notice of Completion and Proof of Enrollment Certificates (File Due on 12/09/04)

The regulatory action deals with Notice of Completion and Proof of Enrollment Certificates for the Driving Under the Influence Program.

Title 13
California Code of Regulations
ADOPT: 120.01 AMEND: 120.00, 120.02, 120.04
Filed 12/02/04
Effective 01/01/05
Agency Contact: Ann Myrick (916) 657-8857

EMPLOYMENT DEVELOPMENT DEPARTMENT

Voluntary Plans—Family Temporary Disability Insurance

Effective July 1, 2004, the Family Temporary Disability Insurance (FTDI) program of the State Disability Insurance (SDI) paid six weeks of benefits to individuals who care for a seriously ill parent, spouse, domestic partner or child, or to bond with a new child. EDD approves voluntary plans of employ-

ers who provide their employees short-term disability insurance coverage in lieu of SDI. This filing is a certificate of compliance for an emergency regulatory action which explained the effect of FTDI on these voluntary plans by addressing the allocation of liability and sharing of information between voluntary plans and EDD.

Title 22
California Code of Regulations
ADOPT: 3254-4 AMEND: 2712-1, 2712-2, 3253-1, 3254-2
Filed 12/02/04
Effective 12/02/04
Agency Contact: Laura Colozzi (916) 654-7712

FISH AND GAME COMMISSION

Boat Limits

This is a nonsubstantive action clarifying regulations regarding information entered on the Skipper's Log Book, which is a form incorporated by reference in title 14, section 195 (a). This would more accurately conform the regulation to the requirements listed in the incorporated by reference form.

Title 14
California Code of Regulations
AMEND: 195
Filed 12/07/04
Effective 01/06/05
Agency Contact: Tracy L. Reed (916) 653-4899

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

Work Over or Near Water

In this regulatory action, the Occupational Safety and Health Standards Board amends a Construction Safety Order pertaining to "Work Over or Near Water," revising the requirements relating to employees wearing personal floatation devices.

Title 8
California Code of Regulations
AMEND: 1602(a)
Filed 12/08/04
Effective 01/07/05
Agency Contact: Marley Hart (916) 274-5721

OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

The Control of Hazardous Energy

This regulatory action clarifies and updates the requirements for controlling hazardous energy during repair work and set up.

Title 8
California Code of Regulations
AMEND: 3314
Filed 12/07/04
Effective 01/06/05
Agency Contact: Marley Hart (916) 274-5721

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Fall Protection at Ladderway & Stairway Entrances
& Openings

This action amends fall protection requirements at ladderway and stairway openings.

Title 8

California Code of Regulations

AMEND: 3210, 3212

Filed 12/08/04

Effective 01/07/05

Agency Contact: Marley Hart (916) 274-5721

STATE ALLOCATION BOARD

Leroy F. Greene School Facilities Act of 1998—
SFP Lead

In this regulatory action, the State Allocation Board amends regulations under the Leroy F. Greene School Facilities Act of 1998, including amendments relating to the Form SAB 50-04, Application for Funding, and a certification regarding lead-containing materials in modernization projects required under Education Code section 17074.30.

Title 2

California Code of Regulations

AMEND: 1859.2, 1859.51

Filed 12/06/04

Effective 12/06/04

Agency Contact: Lisa Jones (916) 322-1043

STATE WATER RESOURCES CONTROL BOARD
Petroleum Underground Storage Tanks Grant and
Loan Program

This emergency action defines terms, and prescribes the allowable purposes and procedure for a grant and loan program intended to aid individuals and small businesses in upgrading, replacing or removing underground storage tanks to meet applicable standards.

Title 23

California Code of Regulations

ADOPT: 3420, 3421, 3422, 3423, 3424, 3425,
3426, 3427, 3428

Filed 12/03/04

Effective 12/03/04

Agency Contact: Kelly Valine (916) 327-6976

**CCR CHANGES FILED WITH THE
SECRETARY OF STATE
WITHIN JULY 21, 2004
TO DECEMBER 8, 2004**

All regulatory actions filed by OAL during this period are listed below by California Code of Regulation's titles, then by date filed with the Secretary of State, with the Manual of Policies and

Procedures changes adopted by the Department of Social Services listed last. For further information on a particular file, contact the person listed in the Summary of Regulatory Actions section of the Notice Register published on the first Friday more than nine days after the date filed.

Title 1

10/13/04 ADOPT: 1015, 1019, 1048, 1050
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